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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,019	11/30/2001	Andrew Joseph Keogh	063511/9043	4717
23409	7590	02/14/2006	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/889,019

Applicant(s)

KEOGH, ANDREW JOSEPH

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-35, 37, 38, 40-47 and 53-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-35, 37, 38, 40-47 and 53-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Upon further consideration, the indication of allowability of claims 55-57 is hereby withdrawn. The finality of the office action mailed on 8/15/05 is hereby withdrawn to make the following rejections.

Claims 35, 55-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 55, the phrase " wherein the first temperature and first pressure are in a region outside and after an extruder" is indefinite because it is unclear how this limitation ties in with the claim. The claim does not set forth that the expanded foodstuff is passed through an extruder.

Claims 56-57 have the same problem as claim 55.

Claim 35 is indefinite because it is not clear what is meant by heated to the first temperature because the composition is already heated in an extruder and the temperature in the extruder can be higher than the temperature outside of the extruder; thus, how is the composition heated.

Claims 24, 38, 25-29, 31-34, 37, 40-43, 45-47, 53-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al.

Bisson et al disclose a process of making puffed product. The process comprises the steps of forming mixture of materials and passing the mixture through an extruder having temperature in the range of 30-70 degree C in the barrel, 40-100 degreeC in the nozzle and under pressure. The paste-like material issuing from the extruder is passed into an enclosure where a subatmospheric pressure prevails. The

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enclosure has a pressure of from 2-71kPa(.02-.7atms). The paste-like material expands in the enclosure by evaporation of the water. The strand issuing from the extruder nozzle may be cut up into rods, pellets or chip. Alternative, the extruded strand may be discharged into a space where atmospheric pressure prevails. The temperature in the extruder imparts to the materials the plasticity required for passing smoothly through the bores in the nozzle. The product obtained can be seasoned, sweetened, flavoured or coloured. The puffed product may be impregnated with a fat, syrup, liquor or an alcohol. The mixture used to form the food product contains water. (see col. 2-3)

Bisson et al do not disclose using a belt conveyor, the foodstuff is a confectionery, forming the composition into balls, the second temperature being lower than the first temperature.

The limitation of the first temperature and pressure being in a region outside of the extruder does not define over Bisson et al. The materials in Bisson et al are passed through an extruder and a paste-like material is formed emerging from the extruder. After the paste material exists the extruder, it is obvious that the paste has a certain temperature because the material is heated inside the extruder; this is equivalent to the first temperature. As the paste exists the extruder, it comes out; thus, the pressure is changed to atmospheric pressure. This is equivalent to the first pressure. With respect to claims 24, 38, the materials in the Bisson process is heated in an extruder to a temperature in the range of 30-100 degree C. As the material exists the extruder, the composition would still have the temperature it is heated to inside the extruder because no cooling take places. The paste is then passed into an enclosure

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where a subatmospheric pressure prevails. This is equivalent to the claimed setting region. It would have been obvious to make the temperature here lower because Bisson et al disclose the temperature falls to cause puffing and rigidification of the cellular structure. It would have been obvious to one skilled in the art to determine the appropriate temperature and pressure depending on the substance being puffed and the degree of puffing through routine experimentation. It would have been obvious to use a belt conveyor to transport the composition to the enclosure where expansion takes place. The use of the conveyor belt enhances the speed of the process. It would also have been obvious to make a confectionery product because Bisson et al disclose various compositions can be made and materials such as syrup, sweetening agent can be added. The addition of sugar will make the product to be a confectionery product.

Claims 30,44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al in view of Forkner.

The teaching of Bisson is described above.

Bisson does not disclose adding a chemical expanding agent.

Forkner discloses expanded confections. He teaches to add chemical expanding agent to aid in the expansion. (See col. 6 lines 45-50)

It would have been obvious to add a chemical expanding agent as taught by Forkner in the composition of Bisson to aid in the expansion of the food product.

Claim 35 is free of prior art because there is no teaching that the paste is being heated to the first temperature in a region outside of the extruder.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 8, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700